

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Jose Gonzalez, Plaintiff, -v- Father & Sons Pizzeria Inc., Defendant.	Civ. Action #: <u>Complaint</u> Jury Trial Demanded
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Plaintiff Jose Gonzalez (“Plaintiff” or “Gonzalez”), by Abdul Hassan Law Group, PLLC, his attorneys, complaining of Defendant Father & Sons Pizzeria Inc. (“Defendant”) respectfully alleges as follows:

NATURE OF THE ACTION

1. Plaintiff alleges that he was employed by Defendant and pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 216 (b), he is: (i) entitled to unpaid overtime wages from Defendant for working more than forty hours in a week and not being paid an overtime rate of at least 1.5 times his regular rate for such hours over forty in a week; (ii) entitled to unpaid minimum wages for working and not being paid at the applicable minimum wage rate for each hour worked in a week; and (iii) entitled to maximum liquidated damages and attorneys' fees pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. including 29 U.S.C. § 216(b).
2. Plaintiff further complains pursuant to New York Labor Law, that he is: (i) entitled to unpaid overtime wages from Defendants for working more than forty hours in a week and not being paid an overtime rate of at least 1.5 times his regular rate for such hours over forty in a week, (ii) entitled to unpaid minimum wages from Defendants for working and being paid less than the applicable New York State minimum wage rate for each hour he worked for Defendants in a week; (iii) entitled to an extra hour of pay for each day he worked a spread of hours of more than ten (10) hours pursuant to New York Minimum Wage Act and the regulations thereunder including 12 NYCRR 142-2.4, 12 NYCRR 146-1.6.; and (iv) is entitled to maximum liquidated damages and attorneys fees, pursuant to the New York Minimum Wage

Act ("NYMWA"), N.Y. Lab. Law §§ 650 et seq., including NYLL § 663, and the regulations thereunder.

3. Plaintiff is also entitled to recover his unpaid wages, and unlawful wage deductions, under Article 6 of the New York Labor Law including Section 191, 193, and compensation for not receiving notices and statements required by NYLL 195, under Article 6 of the New York Labor Law and is also entitled to maximum liquidated damages and/or interest, and attorneys' fees pursuant to Section 198 of the New York Labor Law.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367. In addition, the Court has jurisdiction over Plaintiff's claim under the Fair Labor Standards Act pursuant to 29 U.S.C. § 216 (b).
5. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b) and/or 29 USC § 216(b).
6. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2202, 2201.

THE PARTIES

7. Plaintiff Jose Gonzalez ("Plaintiff" or "Gonzalez") is an adult, over eighteen years old, who currently resides in King's County in the State of New York.
8. Upon information and belief and all times relevant herein, Defendant Father & Sons Pizzeria Inc. ("Father & Sons") was a New York for-profit corporation.
9. At all times relevant herein, Defendant owned and/or operated a place of business in King's County, New York, at 7901 17th Ave, Brooklyn, NY 11214, where Plaintiff was employed.

10. At all times relevant herein, Plaintiff was employed by Defendant.

STATEMENT OF FACTS

11. Upon information and belief, and at all relevant times herein, Defendant was engaged in the food service business – operating a restaurant/pizza restaurant.

https://www.fatheronswoodfireovenpizza.com/?utm_source=gbp

12. Upon information and belief, and at all relevant times herein, Defendant owned and/or operated one or more locations and employed about 20 or more employees.

13. Plaintiff was employed by Defendant from in or around December 2020 to on or about December 10, 2022.

14. At all times relevant herein, Plaintiff was employed by Defendant as a food prepper and delivery person.

15. At all times relevant herein, and throughout the period Plaintiff was employed by Defendant, Plaintiff worked 72 or more hours each week for Defendant, 12 hours a day, 6 days a week, with the exception of about 2-4 weeks each year.

16. At all times relevant herein and throughout his employment with Defendant, Plaintiff was paid approximately \$6.66 an hour for all hours worked including overtime hours (hours over 40 in a week). At all times relevant herein, Plaintiff was paid at a rate lower than the applicable Federal and NYS minimum wage rate for the entire period of his employment with Defendant.

17. At all times relevant herein, Plaintiff was not paid at a rate of at least 1.5 times his regular rate and 1.5 times the applicable federal and state minimum wage rate for each and all overtime hours (hours over 40), worked in a week, for each week during his employment with Defendants.

18. At all times relevant herein, Defendant failed to pay Plaintiff at a rate of at least the federal

and NYS applicable minimum wage rate for each and all hours worked in a week, for each week during his employment with Defendant.

19. At all times relevant herein, Plaintiff worked a spread of hours of more than 10 hours a day as set forth above during his employment with Defendant but was not paid an additional hour of pay for each such day in violation of 12 NYCRR 142-2.4, 12 NYCRR 146-1.6.
20. A more precise statement of the hours and wages may be made when Plaintiff obtains the wage and time records Defendant was required to keep under the FLSA and NYLL. *Accurate* copies of Plaintiff's wage and time records that Defendant was required to keep pursuant to 29 USC 211, 29 CFR 516 and NYLL 195, 12 NYCRR 142.2-6 are incorporated herein by reference.
21. At all times relevant herein, Defendant did not provide Plaintiff with the notice(s) required by NYLL 195(1). *Alonso Vazquez v. Azoulay*, 834 F. App'x 653, 654 (2d Cir. 2021).
22. At all times relevant herein, Defendant did not provide Plaintiff with the statement(s) required by NYLL 195(3). *Alonso Vazquez v. Azoulay*, 834 F. App'x 653, 654 (2d Cir. 2021).
23. Upon information and belief, and at all times relevant herein, Defendant had revenues and/or transacted business in an amount exceeding \$500,000 annually.
24. At all times applicable herein, Defendant conducted business with vendors and other businesses outside the State of New York.
25. At all times applicable herein and upon information and belief, Defendant conducted business in interstate commerce involving the purchase of food and other essential equipment and supplies.
26. Defendant as a regular part of its business, makes payment of taxes and other monies to agencies and entities outside the State of New York.

27. Defendant as a regular part of its business, engaged in credit card transactions involving banks and other institutions outside the state of New York.
28. At all times applicable herein and upon information and belief, Defendant transacted business with insurance companies, banks and similar lending institutions outside the State of New York.
29. At all times applicable herein and upon information and belief, Plaintiff and Defendant utilized the instrumentalities of interstate commerce such as the United States mail, internet electronic mail and telephone systems.
30. Upon information and belief, and at all relevant times herein, Defendant failed to display federal and state minimum wage/overtime posters.
31. The circumstances of Plaintiff's termination and other conditions of his employment are under review and investigation and Plaintiff may assert wrongful termination and other claims at a later time.
32. Upon information and belief, and at all relevant times herein, Defendants failed to notify Plaintiff of his federal and state minimum wage and overtime rights and failed to inform Plaintiff that he could seek enforcement of such rights through the government enforcement agencies.
33. "Plaintiff" as used in this complaint refers to the named Plaintiff.
34. The "present" or the "present time" as used in this complaint refers to the date this complaint was signed.

AS AND FOR A FIRST CAUSE OF ACTION

FAIR LABOR STANDARDS ACT - 29 U.S.C 201 et Seq. (Unpaid Overtime + Min. Wages)

35. Plaintiff alleges and incorporates by reference the allegations in paragraphs 1 through 34

above as if set forth fully and at length herein.

36. At all times relevant to this action, Plaintiff was employed by Defendant within the meaning of the FLSA – 29 USC 201 et Seq.
37. At all times relevant to this action, Plaintiff was engaged in commerce and/or in the production of goods for commerce and/or Defendant constituted an enterprise(s) engaged in commerce within the meaning of 29 U.S.C. §§ 206, 207.
38. At all times relevant herein, Defendant transacted commerce and business in excess of \$500,000.00 annually or had revenues in excess of \$500,000.00 annually.
39. At all times relevant herein, Defendant failed and willfully failed to pay plaintiff overtime compensation at rates of at least 1.5 times his regular rate of pay for each hour worked in excess of forty hours in a work week, in violation of 29 U.S.C. § 207.
40. At all times relevant herein, Defendants failed and willfully failed to pay Plaintiff a rate at least equal to the applicable federal minimum wage rate for each hour worked in a week, in violation of 29 U.S.C. § 206.

Relief Demanded

41. Due to defendants' FLSA violations, Plaintiff is entitled to recover from Defendant his unpaid overtime and minimum wage compensation, maximum liquidated damages, attorney's fees, and costs of the action, pursuant to 29 U.S.C. § 216(b).

AS AND FOR A SECOND CAUSE OF ACTION

NYLL 650 et Seq. and 12 NYCRR 142-2.2 etc. (Unpaid OT + Min wages + SOH wages)

42. Plaintiff alleges and incorporates by reference the allegations in paragraphs 1 through 40 above as if set forth fully and at length herein.
43. At all times relevant to this action, Plaintiff was employed by Defendant within the meaning

of the New York Labor Law, §§ 2 and 651 and the regulations and wage orders thereunder including 12 NYCRR § 142.

44. At all times relevant herein, Defendant failed and willfully failed to pay Plaintiff overtime compensation at rates not less than 1.5 times his regular rate of pay and 1.5 times applicable minimum wage rate for each hour worked in excess of forty hours in a work week, in violation of the New York Minimum Wage Act and its implementing regulations and wage orders. N.Y. Lab. Law §§ 650 et seq., including 12 NYCRR § 142-2.2. 12 NYCRR § 146-1.4.

45. At all times relevant herein, Defendant failed and willfully failed to pay Plaintiff at a rate that was at least equal to the applicable New York State minimum wage rate for each hour worked in a week in violation of the New York minimum Wage Act and its implementing regulations. N.Y. Lab. Law §§ 650 et seq.; 12 NYCRR § 142-2.1. 12 NYCRR § 146-1.2.

46. At all times relevant herein, Plaintiff worked a spread of hours of more than ten (10) hours a day during his employment with Defendant as set forth above, but Defendant failed to pay Plaintiff an additional hour of pay for each such day in violation of the New York Minimum Wage Act, New York Labor law § 650 et seq., including 12 NYCRR § 142-2.4, 12 NYCRR 146-1.6.

Relief Demanded

47. Due to Defendant's New York Labor Law violations, Plaintiff is entitled to recover from Defendants, his unpaid overtime, minimum wage, and spread of hours compensation, prejudgment interest, maximum liquidated damages, reasonable attorneys' fees, and costs of the action, pursuant to N.Y. Labor L. § 663(1) and the regulations thereunder.

AS AND FOR A THIRD CAUSE OF ACTION

NYLL § 190, 191, 193, 195 and 198

48. Plaintiff alleges and incorporates each and every allegation contained in paragraphs 1 through 47 above with the same force and effect as if fully set forth at length herein.

49. At all times relevant to this action, Plaintiff was employed by Defendant within the meaning of the New York Labor law, §§ 190 et seq., including §§ 191, 193, 195 and 198 and the applicable regulations thereunder.
50. Defendant violated and willfully violated NYLL §§ 190 et seq., including §§ 191, 193 and 198, by failing to pay Plaintiff all the non-overtime wages, spread of hours wages, overtime wages, minimum wages and wage deductions, Plaintiff was entitled to within the time required by NYLL §§ 191, 193 and 198.
51. At all times relevant herein, Defendant failed and willfully failed to provide plaintiff with the notice(s) required by NYLL 195(1) – Plaintiff is therefore entitled to and seeks to recover in this action the maximum recovery for this violation, plus attorneys’ fees and costs pursuant to NYLL 198 including NYLL 198(1-b), as well as an injunction directing Defendants to comply with NYLL 195(1).
52. At all times relevant herein, Defendant failed and willfully failed to provide Plaintiff with the statement(s) required by NYLL 195(3) – Plaintiff is therefore entitled to and seeks to recover in this action the maximum recovery for this violation, plus attorneys’ fees and costs pursuant to NYLL 198 including NYLL 198(1-d), as well as an injunction directing Defendant to comply with NYLL 195(1).

Relief Demanded

53. Due to Defendants’ New York Labor Law Article 6 violations including violation of sections 191, 193 and 198, Plaintiff is entitled to recover from Defendant his entire unpaid wages, including his unpaid overtime wages, non-overtime wages, minimum wage, spread of hours compensation, and wage deductions, maximum liquidated damages, prejudgment interest, maximum recovery for violations of NYLL 195(1) and NYLL 195(3), reasonable attorneys’ fees, and costs of the action, pursuant to N.Y. Labor Law § 190 et seq. including § 198.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

57. Declare Defendant to be in violation of the Plaintiff's rights under the Fair Labor Standards Act, Article 6 of the New York Labor Law, the New York Minimum Wage Act, and the Regulations thereunder;
58. As to the **First Cause of Action**, award Plaintiff his unpaid overtime and minimum wages due under the FLSA, together with maximum liquidated damages, costs and attorney's fees pursuant to 29 USC § 216(b);
59. As to his **Second Cause of Action**, award Plaintiff his unpaid overtime wages, minimum wages and spread of hours wages due under the New York Minimum Wage Act and the Regulations thereunder including 12 NYCRR §§ 142-2.2, 2.1, 2.4, 12 NYCRR 146-1.4, 1.2, 1.6, together with maximum liquidated damages, prejudgment interest, costs and attorney's fees pursuant to NYLL § 663;
60. As to his **Third Cause of Action**, award Plaintiff all outstanding wages, including non-overtime wages, overtime wages, minimum wages, spread of hours wages, wage deductions, plus maximum liquidated damages, maximum recovery for violations of NYLL 195(1) and NYLL 195(3), reasonable attorneys' fees, and costs of the action, pursuant to N.Y. Labor Law § 190 et seq. including § 198, and issue an injunction directing defendants to comply with NYLL 195(1) and NYLL 195(3).
61. Award Plaintiff prejudgement interest on all monies due;
62. Award Plaintiff any relief requested or stated in the preceding paragraphs but which has not been requested in the WHEREFORE clause, in addition to the relief requested in the wherefore clause;
63. Award plaintiff such other, further and different relief as the Court deems just and proper.

**Dated: Queens Village, New York
December 31, 2022**

Respectfully submitted,

Abdul Hassan Law Group, PLLC

/s/ Abdul Hassan

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